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No. 02-1423

IN THE
Supreme Court of the United States

BELLSOUTH CORPORATION AND
BELLSOUTH TELECOMMUNICATIONS, INC.,
Petitioners,

v.

COVAD COMMUNICATIONS COMPANY AND
DIECA COMMUNICATIONS, INC. D/B/A
COVAD COMMUNICATIONS COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

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Respondent Covad agrees that BellSouth's petition for a writ of certiorari presents issues that "deserve to be resolved by this Court." Covad Resp. at 2-3. Indeed, Covad urges the Court to grant certiorari now and set this case for argument in tandem with *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, L.L.P.*, No. 02-682. The Court can best determine whether it wishes to grant this case and hear argument on the same day as *Trinko* or whether it would be more efficient to hold this case, decide the *Trinko* case first, and then grant BellSouth's petition if necessary to resolve any remaining issues.

In no event, however, would it be appropriate to deny this petition. Covad concedes that its claims overlap substantially with those presented by the plaintiff in *Trinko*. *See* Covad Resp. at 2-3 ("[b]oth Covad's claims and those presented in *Trinko* conflict with the Seventh Circuit's decision in *Goldwasser*"). At a minimum, therefore, if the Court does not

grant the petition now, it should hold this petition, grant it if necessary to resolve any legal issues that remain after the *Trinko* case is decided, or summarily grant, vacate, and remand the petition if the questions presented are resolved by *Trinko*. *See* Robert L. Stern, *et al.*, *Supreme Court Practice* § 4.16, at 255 (8th ed. 2002) ("Where the petition for certiorari presents a question that is identical with, or similar to, an issue already pending before the Supreme Court in another case in which certiorari has been granted . . . , the Court will either grant the petition and set the case for argument or postpone consideration of the petition until the other case has been decided and then make summary disposition of the case in accordance with that decision.").

CONCLUSION

The Court should grant the petition or, at a minimum, hold it pending the Court's decision in *Trinko*.

Respectfully submitted,

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